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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re M.F., A Person Coming Under
the Juvenile Court Law.

B290540
(Los Angeles County
Super. Ct. No. DK14292)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

E.P.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Nichelle Blackwell, Judge. Affirmed.

Gina Zaragoza, under appointment by the Court of Appeal, for Defendant and Appellant.

Tarkian & Associates and Arezoo Pichvai for Plaintiff and Respondent.

E.P. (Mother) appeals from the order terminating her parental rights to M.F. (born in 2011) arguing that the dependency court erred in finding the parent-child relationship exception and the sibling relationship exception to termination of parental rights (Welf. & Inst. Code,¹ § 366.26, subds. (c)(1)(B)(i) & (c)(1)(B)(v)) did not apply. We disagree and affirm.

FACTUAL BACKGROUND

In late October 2015, the family, which consisted of Mother, M.F. (then four-years-old) and her two siblings S.A., Jr. (then three-years-old) and D.A. (eight-months-old at the time), and Mother's husband, S.A., Sr., the father of M.F.'s siblings, came to the attention of the Department of Children and Family Services (DCFS) based on a referral from the police that Mother and S.A., Sr., had emotionally abused the children.² The police reported that when they responded to a report of domestic violence in the family home, Mother told them that after she accused S.A., Sr., of infidelity, they argued, and then he became violent with her—he grabbed her by the hair, punched her on the back of the head, and threw her to the ground. She reported that he then left home for a couple of hours and when he returned, he pushed her into the closet and began punching her and that he threatened her. Although the children were home at the time, apparently they did not witness the abuse.

¹ All statutory references are to the Welfare & Institutions Code unless otherwise indicated.

² MF.'s siblings and S.A., Sr., are not parties to this appeal. Likewise, M.F.'s father, G.F., is not a party to this appeal.

When the DCFS investigator came to the home, she interviewed the family's neighbor who told the investigator that S.A., Sr., abused methamphetamine and that the parents had engaged in domestic violence. The investigator spoke to Mother, who characterized the situation as a one-time verbal disagreement, which became "loud." Mother denied that S.A., Sr., yelled, screamed, pushed, or punched her; she stated that he was nonviolent and that he did not use drugs. Mother also stated that she did not want to separate from him. In a subsequent interview, Mother reported that during the argument, S.A., Sr., grabbed her and pushed her to the floor and attempted to hit her but he stopped when she called him a "coward."

The social worker interviewed S.A., Sr., who denied the abuse. He also denied current use of drugs; however, his subsequent drug test was "positive" for methamphetamine and amphetamine.

The social worker also spoke to M.F., who initially denied that the parents engaged in domestic violence but also reported that she had been "coached" by Mother to say that her stepfather was nice and to deny that S.A., Sr., abused Mother. In a subsequent interview, M.F. stated that she was afraid of S.A., Sr., and that he had physically abused Mother in the past.

DCFS took the children into protective custody. On November 18, 2015, DCFS filed a petition pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b), on behalf of the children, alleging that Mother and S.A., Sr., had a history of domestic violence while the children were present, including the October 2015 incident to which the police had responded, that Mother failed to protect the children by allowing S.A., Sr., to reside in the home, and that S.A., Sr., abused drugs, which interfered with his ability to parent his children. The court ordered the children detained. DCFS placed M.F. in the home

of her paternal grandmother and placed her siblings in foster care. The court ordered monitored visits for Mother and the siblings and ordered the parents to participate in services and classes.

Mother enrolled in individual therapy and classes to address domestic violence, parenting, and anger management, which she completed by mid-February 2016. In subsequent interviews, however, Mother continued to minimize the incidents of domestic violence, and deny that M.F. was afraid of S.A., Sr. She claimed that she, not her husband, was responsible for the domestic disputes.

Mother visited the children regularly. During these visits, the social worker observed that Mother struggled to exhibit appropriate parenting behaviors. Mother expressed frustration and acted aggressively towards the children; she grabbed them, snatched items from them, and spoke to them inappropriately.

When the social worker visited M.F. in the paternal grandmother's home, she observed that the paternal grandmother was patient and nurturing to M.F. and that the child responded well. The paternal grandmother told the social worker that M.F. reported that she frequently witnessed the Mother and her stepfather fight.

On March 4, 2016, the court sustained the petition under section 300, subdivision (b), and continued the matter for a disposition hearing. In the disposition report, the social worker stated it appeared that Mother had not made insightful changes to her parenting or the manner in which she related to the children. It was reported that Mother exhibited impulsive behavior and minimized the issues that brought the case to the attention of DCFS.

The court declared the children to be dependents of the court under section 300, subdivision (b). The court ordered DCFS to provide family reunification services and ordered the parents to

participate in individual counseling to address the case issues. The court granted Mother and S.A., Sr., separate monitored visits at least three times a week for up to three hours a visit, and specified that Mother could not monitor S.A., Sr., visits.³

Although it was reported that Mother participated in her therapy sessions and appeared to make progress in her treatment, she continued to minimize the abuse in her relationship with S.A., Sr., characterizing their issues as communication problems. Mother also stated that she planned to continue her relationship with S.A., Sr., even though she was told that she needed to end the relationship with him because he was not participating in services. The social worker concluded that the Mother had not made sufficient progress in addressing her issues because she remained in contact with S.A., Sr.

M.F. continued to reside with the paternal grandmother and appeared happy and well. On October 11, 2016, the court held the six-month review hearing under section 366.21, subdivision (e), and found that Mother complied with the case plan. The court ordered Mother to participate in a domestic violence support group. On December 7, 2016, the social worker completed an assessment and recommended that Mother's visits be liberalized and gradually progress to overnight visits. The social worker stated that DCFS recommended that the children slowly transition back to Mother's care. On December 13, 2016, DCFS liberalized Mother's visits with M.F. to unmonitored visits. S.A., Sr., however, had not maintained contact with DCFS or participated in services.

By the end of January 2017, Mother had completed the court-ordered classes. On January 23, 2017, the court granted Mother overnight unmonitored visits with M.F., which she did

³ Mother did not seek appellate review of the jurisdiction or disposition orders.

during February 2017. On March 15, 2017, the court held the 12-month review hearing and granted DCFS discretion to liberalize Mother's visits including the return of the children to her care.

On March 16, 2017, Mother's overnight visit with M.F. had been canceled because it was reported that Mother and M.F. had been with S.A., Sr., and that Mother had struck the child and Mother told her that she was "bad." M.F. stated that she continued to be frightened of S.A., Sr., and that he yelled at her and called her demeaning names. When questioned about the incident, Mother denied having any contact with S.A., Sr. The paternal grandmother also informed the social worker that S.A., Sr., had passed by her home and made an obscene gesture to M.F. who was playing in the front yard at the time.

As a result, DCFS asked the court to order that Mother's visits with M.F. revert to monitored visitation. The court granted that request and also ordered that S.A., Sr., not be present during M.F.'s visits with Mother. Mother continued to struggle to maintain control during her interactions with M.F. during the subsequent monitored visits; she called the child demeaning names, and M.F. responded aggressively to Mother. Mother later told the social worker that she was frustrated with M.F. and recognized that she needed tools to redirect the child's behavior.

On July 10, 2017, the court held the 18-month review hearing under section 366.22 and terminated family reunification services for the parents.

During the post-reunification period, Mother continued to visit with the children regularly. But, Mother also continued her relationship with S.A., Sr., even though he had not complied with court orders for classes and treatment. M.F. continued to live in the home of the paternal grandmother, who met the child's educational, physical, psychological, and emotional needs.

In mid-January 2018, Mother filed the first of two section 388 petitions for a modification of the court's order terminating her family reunification services and reinstatement of services. She pointed out that she had re-enrolled in individual counseling, and attended marriage counseling with S.A., Sr., and consistently visited the children and had a job. The court summarily denied the petition.

On March 15, 2018, Mother filed a second section 388 application for an order to reinstitute family reunification services. Mother reported that she had completed counseling and classes. She also claimed that she and S.A., Sr., had separated. Mother requested that the court return the children to her care or, in the alternative, grant her additional family reunification services and unmonitored visits to include overnight visits with the children.

In late February 2018, Mother told the social worker that she was afraid that domestic violence might reoccur with S.A., Sr., and stated that she planned to break off her relationship with him. She requested assistance to find a divorce lawyer. The social worker, however, learned that Mother had also recently posted several pictures of herself with S.A., Sr., on her social media account and wrote as the caption, "[T]herefore what God has joined together, let no one separate." She also posted another expression of her love for S.J., Sr., on her social media account along with a photo Mother and S.A., Sr., hugging.

M.F. continued to do well in her placement with her paternal grandmother who was approved to adopt her. M.F. stated that she felt safe and happy in the home, although she missed her younger brothers. The paternal grandmother stated that she would continue to arrange for M.F. to visit her siblings.

On April 10, 2018, the court held a hearing on the second section 388 application jointly with section 366.26 hearing. M.F.'s counsel and DCFS acknowledged that the child had a bond with the

Mother and enjoyed their visits, but stated that “that simply isn’t enough”; counsel argued that Mother had not “yet gained the level of insight to indicate that there are actually changed circumstances,” despite her participation in services and classes. The court denied the section 388 petition, finding that Mother had failed to demonstrate both changed circumstances and that the proposed change in the order terminating reunification services would be in the children’s best interests.

Concerning section 366.26, DCFS and M.F.’s counsel requested that the court terminate parental rights and M.F.’s father, G.F., told the court he did not oppose the termination of parental rights. The court found that Mother failed to prove that the parental-bond exception applied, stating, “[w]hile the child clearly enjoys the visits with the mother, it doesn’t appear she looks for her upbringing, her mental health, her psychological health and her psychological health towards her mother. [¶] Instead she looks more towards paternal grandmother, who has actually been providing that parental role in her life, such that the child maintains that she finds the home to be safe, she wants to remain in that home, and she would like to be adopted.”

As to the sibling bond exception to the termination of parental rights, the court found that although M.F. stated she was bonded to her siblings, “[b]ecause there are other options that can be put into place, such as referring this matter to the consortium, which I refer to, and because the paternal relatives do not intend to eliminate M.F. [from maintaining a] relationship with her brothers, I do find the sibling bond exception is not outweighed by the weighty requirement of maintaining stability for the child, such that the termination of parental rights should not apply.” The court found by clear and convincing evidence that M.F. was likely to be adopted and terminated parental rights.

Mother timely appeals from the order terminating her parental rights.⁴

DISCUSSION

After the court terminates reunification services, the focus of dependency proceedings shifts to the needs of the child for permanency and stability, and specifically to determining the best interests of the child. (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.) If the child is adoptable, there is a strong preference for adoption over the alternatives of guardianship or long-term foster care. (*Id.* at p. 528.) Indeed “[b]ecause a parent’s claim to [an alternative to adoption] is evaluated in light of the Legislature’s preference for adoption, it is only in exceptional circumstances that a court will choose a permanent plan other than adoption.” (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469; see § 366.26, subd. (c)(1)(B) [the court “shall terminate parental rights” if the minor is likely to be adopted unless termination would be detrimental to the child under one or more statutory exceptions].)

“[A] parent seeking a less restrictive plan has the burden of showing that the termination of parental rights would be detrimental under one of the exceptions listed in section 366.26, subdivision (c)(1)(B).” (*In re J.C.*, *supra*, 226 Cal.App.4th at p. 528.) This court reviews the dependency court’s section 366.26 findings for sufficiency of the evidence.⁵ (*In re C.F.* (2011) 193 Cal.App.4th 549, 553.)

⁴ Mother did not challenge the denial of the section 388 petitions on appeal or the court’s finding that M.F. was adoptable.

⁵ Appellate courts have applied different standards of review: Whether substantial evidence supports the trial courts determination that no exception applies; or whether the court’s decision that no exception exists was an abuse of discretion (*In re K.P.* (2012) 203 Cal.App.4th 614, 621-622 [reviewing for abuse of discretion while reviewing purely factual findings for substantial

Here, Mother argues that the dependency court erred in finding that the parental relationship and sibling-bond exceptions to termination of parental rights did not apply. We disagree.

A. Parental Relationship Exception

“Section 366.26, subdivision (c)(1)(B)(i) provides for one such exception when ‘[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’” (*In re J.C.*, *supra*, 226 Cal.App.4th at p. 528.) The second prong of this exception requires the parent to demonstrate that his or her relationship with the child “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) “It is not enough to show that the parent and child have a friendly and loving relationship. [Citation.] ‘“Interaction between [a] natural parent and child will always confer some incidental benefit to the child”’ [Citation.] For the exception to apply, ‘a parental relationship is necessary.’” (*In re J.C.*, *supra*, 226 Cal.App.4th at p. 529, italics omitted.) The preference for adoption is overcome only if “severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Mother has not met her burden to show the parent-child relationship exception. She maintained consistent visitation with M.F., however, Mother struggled to engage in positive parental conduct during those visits. As the social workers and visitation

evidence]; *In re C.B.* (2010) 190 Cal.App.4th 102, 122-123; see *In re Anthony B.* (2015) 239 Cal.App.4th 389, 395 [applying substantial evidence standard of review to the sibling relationship exception].) On the record before us, we would affirm under either standard.

monitors observed, Mother frequently failed to maintain control during her interactions with M.F., often displaying aggression and engaging in name-calling and other negative and impulsive behaviors toward the child. In fact, after a month of weekly overnight, unmonitored visits in early 2017, the court ordered that Mother's visits with the child revert to monitored because Mother struck the child and allowed S.A., Sr., to be present during the visitation—in violation of the directives of DCFS.

Even assuming, however, Mother satisfied the visitation prong of the exception, she failed to demonstrate the requisite benefit to M.F. from preserving her parental rights and foregoing an adoptive home. By the time of the section 366.26 hearing, M.F. had spent nearly half of her life living with someone other than Mother. There is little evidence in the record demonstrating that Mother occupied a parental role in the child's life at the time. Mother had not shown she was involved in or knowledgeable about M.F.'s mental, emotional, physical, or educational development. There was no evidence that Mother was familiar with the child's habits or daily routine.

Further, until the last moment, Mother was more interested in preserving her relationship with S.A., Sr., than M.F. Thus, the attachment between Mother and M.F. was not strong enough to warrant having M.F. forego the security of an adoptive family. Mother failed to establish exceptional circumstances which would warrant the court choosing a permanent plan other than adoption. Accordingly, the dependency court did not err in finding the parent-child exception to termination of parental rights did not apply.

B. Sibling Relationship Exception

The “sibling relationship” exception codified in section 366.26, subdivision (c)(1)(B)(v), provides an exception to termination of parental rights when “[t]here would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to[:] [1] whether the child was raised with a sibling in the same home, [2] whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and [3] whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(B)(v); see *In re Valerie A.* (2007) 152 Cal.App.4th 987, 998.)

Under section 366.26, subdivision (c)(1)(B)(v), the juvenile court “is directed first to determine whether terminating parental rights would substantially interfere with the sibling relationship.” (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 951–952; see *In re Daisy D.* (2006) 144 Cal.App.4th 287, 293 [“The exception . . . applies only when adoption would result in ‘substantial interference with a child’s sibling relationship.’”].) “If the court determines terminating parental rights would substantially interfere with the sibling relationship, the court is then directed to weigh the child’s best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption.” (*In re L. Y. L.*, *supra*, 101 Cal.App.4th at p. 952; § 366.26, subd. (c)(1)(B)(v).) “The author of the legislation adding the sibling relationship exception anticipated that ‘use of the new exception “will likely be rare,” ’ meaning ‘that the child’s relationship with his or her siblings would rarely be sufficiently strong to outweigh the benefits of adoption.’” (*In re Daisy D.*, *supra*, 144 Cal.App.4th at p. 293; see *In re Valerie A.*, *supra*, 152 Cal.App.4th at p. 1014 [“application of this exception will be rare,

particularly when the proceedings concern young children whose needs for a competent, caring and stable parent are paramount”].)

Here, the siblings did not reside together for more than a year. They did, however, consistently visit while the case was pending, and from M.F.’s perspective, they had a positive and loving relationship. The court also found that paternal relatives were committed to continuing M.F.’s connection with her brothers post-termination. The promise to maintain the sibling relationships was a relevant consideration for the court in determining whether the exception applied. (See *In re D.O.* (2016) 247 Cal.App.4th 166, 175 [assurance of future sibling visits are relevant to the determination of the sibling relationship exception].) The court appropriately considered the paternal grandmother’s assurances that she would facilitate M.F. maintaining a relationship with her siblings. Consequently, it is not a foregone conclusion that termination of parental rights would substantially interfere with M.F.’s sibling relationship, and that fact coupled with the evidence of the permanency, stability, and care offered by M.F.’s paternal grandmother supported the dependency court’s decision. In any case, considering all of the facts the best interest of M.F. was to be adopted by her grandmother.

DISPOSITION

The order terminating parental rights is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur.

CHANEY, J.

BENDIX, J.